

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 14-R-00015-DFM
)	
JUAN CARLOS FOX,)	
)	DECISION ON PETITION FOR
Former Member No. 137928,)	REINSTATEMENT
)	
<u>Petitioner for Reinstatement.</u>)	

INTRODUCTION

In this proceeding petitioner **Juan Carlos Fox** (Petitioner) seeks to be reinstated to the practice of law after resigning with charges pending, effective August 27, 2003. Petitioner's effort is opposed by the State Bar of California.

After carefully considering all of the evidence and arguments of the parties, this court concludes that Petitioner has met his burden of proof. Accordingly, this court recommends that he be reinstated to the practice of law.

PERTINENT PROCEDURAL HISTORY

On January 3, 2014, Petitioner filed his petition for reinstatement.

On March 3, 2014, an initial status conference was held in the case. At that time the case was scheduled to commence trial on July 15, 2014, with a seven-day trial estimate.

On June 6, 2014, the State Bar of California, Office of the Chief Trial Counsel (State Bar) filed an opposition to the petition for reinstatement.

On June 24, 2014, Petitioner filed a motion to continue the trial date due to the effect caused by the parties' prior agreement to extend the deadline for the State Bar to file its response. The State Bar filed a statement of non-opposition to the requested continuance, and the trial date was then continued to November 19, 2014.

Trial was commenced on November 19, 2014, and completed on November 21, 2014. Petitioner was represented at trial by attorney Michael Taggart. The State Bar was represented by Senior Trial Counsel Ashod Mooradian.

Overview of Requirements for Reinstatement

Rule 5.445 of the Rules of Procedure provides that petitioners for reinstatement, who previously had been disbarred or resigned with charges pending, must:

- (1) pass a professional responsibility examination within one year prior to filing the petition;
- (2) establish their rehabilitation;
- (3) establish present moral qualifications for reinstatement; and
- (4) establish present ability and learning in the general law by providing proof that they have taken and passed the Attorneys' Examination by the Committee of Bar Examiners within three years prior to the filing of the petition.

Reinstatement petitioners must also submit proof that they have paid all discipline costs and have reimbursed all payments made by the Client Security Fund as a result of the petitioner's prior misconduct. (Rules Proc. of State Bar, rule 5.441,.)

The only disputed issues in this matter are whether Petitioner has sustained his burden of proving that he is rehabilitated and has the present moral qualifications for reinstatement. The evidence is uncontradicted, and this court finds, that Petitioner passed the November 2013 Multistate Professional Responsibility Examinations (MPRE) within one year prior to the filing of the instant petition for reinstatement; passed the February 2012 California State Bar

Attorneys' Examination, a date within three years prior to the filing of this petition; paid all discipline costs previously imposed against him; and owes no money to the Client Security Fund.

Rehabilitation/Present Moral Qualifications

While the law looks with favor upon the regeneration of errant attorneys (*In re Andreani* (1939) 14 Cal.2d 736, 749), the burden on a petitioner to prove his or her rehabilitation is a heavy one. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091.) Our Supreme Court has consistently held that a petitioner for reinstatement must produce "stronger proof of his present honesty and integrity than one seeking admission for the first time whose character has never been in question." (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Proof of such rehabilitation requires "overwhelming" proof of a lengthy period of not only unblemished, but exemplary conduct. (*In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894, 899; *In re Menna* (1995) 11 Cal.4th 975, 989.)

In determining whether that burden has been met, evidence of present character must be considered in the light of the moral shortcomings which surrounded the prior imposition of discipline or resignation with charges pending. It is appropriate, therefore, to examine the extent of the prior misconduct to begin to determine the length of the road to rehabilitation. (*Tardiff v. State Bar, supra*, 27 Cal.3d at p. 403.)

Petitioner's Background/Charges Pending at Time of Resignation

Petitioner is a 55-year-old man, born in 1959. He has a degree in business from San Diego State University and graduated from Western State College of Law. He was admitted to the practice of law in the State of California on December 7, 1988.

After being admitted to the bar and prior to his resignation from it in 2003, Petitioner's practice was largely in the area of worker's compensation matters. Prior to his resignation, he

practiced for more than 14 years with no evidence of any complaints by any client or any problems arising from his practice as an attorney.

In 1997, Petitioner married. In November 1998, Petitioner and his wife purchased an historic home in Chula Vista that was in need of significant repair. The cost of the home and the required improvements placed considerable financial and emotional strain on Petitioner. This strain was increased when Petitioner's office experienced a decline in business in 1998, resulting in Petitioner sometimes going without a paycheck. In March 1999, Petitioner and his wife learned that she was pregnant with their first child, due in March 2000. While Petitioner was happy with the news of the pregnancy, the anticipated additional financial pressure this new family member would create caused Petitioner to feel even greater stress. To deal with that pressure, Petitioner began to abuse alcohol.

In the midst of Petitioner's ongoing anxiety about how he and his family could survive financially, Petitioner was approached by an uncle, Alfonso Romay (Romay), with a proposal to participate in a scheme to submit three false stolen vehicle claims to Mexican auto insurance companies.¹ Romay was a resident of Mexico City. Petitioner, along with several others, subsequently joined together in this scheme.

On May 18, 1999, Petitioner and Romay purchased from Quality Auto Brokers in San Diego, California, a used 1996 BMW for \$52,925.25. On October 13, 1999, Petitioner purchased a Temporary Mexican Auto Insurance policy for the BMW from Grupo Nacional Provincial Insurance Company (GNP). The auto policy coverage dates were from October 20, 1999, to November 8, 1999, and the coverage amount was \$100,000. In purchasing the insurance, Petitioner claimed that the BMW was armor-plated and worth \$100,000. In addition,

¹ In 1981, Petitioner worked as an insurance agent in Mexico for approximately one year, giving him intimate knowledge of the Mexican insurance system.

on October 13, 1999, Petitioner obtained a Mexico Department of Interior Temporary Tourist Permit and a Mexican Customs Temporary Importation Permit for the BMW.

On November 5, 1999, while the policy was in force, Petitioner and another co-conspirator, Joseph Lorenzo Amirkhanian (Amirkhanian), traveled to Guadalajara, Mexico, where they stayed at the El Camino Real Hotel.

Petitioner did not bring his BMW with him to Mexico. He and Amirkhanian had traveled to Guadalajara by plane. Nonetheless, on November 6, 1999, Petitioner filed a Stolen Vehicle Report with the Guadalajara Police Department, claiming that he had been robbed of the BMW by an armed assailant while at the La Gran Plaza shopping center. Also on November 6, 1999, Petitioner submitted an insurance claim at the GNP office in Guadalajara, Mexico, again claiming to have been robbed of his vehicle at gun point while at the La Gran Plaza. The amount of Petitioner's claimed loss was \$95,000 (i.e., the full \$100,000 coverage amount less the policy's \$5,000 deductible.)

Petitioner falsely stated in this auto insurance claim that a friend named "Jose Lorenzo" had accompanied him on his trip and had knowledge of the robbery. "Jose Lorenzo" was, in fact, Petitioner's co-conspirator, Amirkhanian, who was filing a very similar fraudulent auto insurance claim with a different Mexican insurance company, Comercial America. After filing the insurance claim, Petitioner returned to California.

In processing Petitioner's claim, investigators for GNP became suspicious because it is so uncommon for an average citizen to have an armor-plated vehicle. The investigators then requested from Petitioner proof that the vehicle was armor-plated. GNP also hired a private investigation firm to further investigate Petitioner's claim. By chance, the assigned investigator at the private investigation firm noted that the firm was handling a similar case in which it had also been claimed that an armored vehicle, purchased at Quality Auto Brokers in San Diego, was

stolen at gunpoint while shopping at La Gran Plaza in Guadalajara, Mexico. The owner of that purportedly stolen vehicle was Michael Gerard Ray (Ray), one of Petitioner's other co-conspirators. That false insurance claim had been with Qualitas Insurance Company, another Mexican insurance company.²

On January 3, 2000, Petitioner sent a letter to GNP, advising it that he felt GNP was making him provide more than enough documents to satisfy the claim. Petitioner explained that he had nothing to hide, therefore, he was confused at why GNP was making him go to such great lengths since the theft of his vehicle occurred "more than two months ago." In this letter Petitioner also included certain documents previously requested by GNP:

- (1) Original title to the BMW;
- (2) The BMW registration card;
- (3) Proof of original final payment of vehicle consisting of:
 - (a) a May 18, 1999 letter from Quality Auto Brokers to Petitioner regarding final payment;
 - (b) a copy of a cashier's check issued to Quality Auto Brokers; and
 - (c) the purported purchase contract for the BMW.
- (4) Proof of armor-plating for the BMW, consisting of two purported letters, dated July 8, 1996, and October 14, 1996, from an armor-plating company to the original owner;
- (5) A copy of the vehicle history from CARFAX;
- (6) A copy of the temporary insurance policy;
- (7) A copy of the Mexico Temporary Import permit;
- (8) A copy of the Mexico Temporary Tourist permit;

² Ray and Amirkhanian were also named as defendants in the subsequent criminal complaint filed in San Diego County Superior Court.

(9) A copy of the certified original of the Guadalajara Stolen Vehicle Report, dated November 5, 1999;

(10) A copy of the original declaration for the BMW's theft report, filled out by the Guadalajara GNP representative; and

(11) A certified copy of a purported California Highway Patrol (CHP) Stolen Vehicle Report.

On January 21, 2000, GNP sent a letter to the CHP, requesting verification of the CHP Stolen Vehicle Report, purportedly submitted by Petitioner on January 3, 2000.

On February 2, 2000, Petitioner wrote to GNP, disputing its request for additional documents, contending that the policy required only a Stolen Vehicle Report from Guadalajara, a Stolen Vehicle Report from the CHP, and the statement of facts that Petitioner had filed at GNP's Guadalajara office.

On February 22, 2000, Petitioner's wife went into premature labor. The baby's delivery then experienced a series of major complications, eventually necessitating utilization of a delivery procedures dangerous to the baby. While this dangerous procedure was being implemented, Petitioner made a prayer in which he both asked for divine assistance in seeing that the baby was born healthy and offered to become a person worthy of such divine intervention if his prayer were answered.

When the baby was born healthy, Petitioner was inspired to make good the commitment to being a better person that he had just made in his prayer. This change of lifestyles included a decision by Petitioner to withdraw from the still-ongoing conspiracy to defraud the Mexican insurance companies. Shortly after February 28, 2000, Petitioner notified the other members of the conspiracy that he would no longer assist in seeking to recover on his pending insurance claim, and all activities by Petitioner in support of the conspiracy then stopped.

On March 3, 2000, the CHP sent a letter to GNP, stating that Stolen Vehicle Report provided to GNP by Petitioner did not exist in CHP records and that the report was false and a fabrication.

In April 2000, GNP denied Petitioner's auto insurance claim. Unbeknownst to Petitioner, this claim denial would not end the investigation of the his claim. It only caused the investigation to be shifted over to law enforcement officials.

On June 12, 2001, a CHP investigator, Arturo Proctor, observed Petitioner's BMW to be parked in Petitioner's home driveway. Later that same day, investigator Proctor observed Petitioner drive his BMW to Petitioner's place of employment.

On October 25, 2001, investigator Proctor interviewed John Mussari (Mussari), the owner of Quality Auto Brokers, with respect to Petitioner's purchase of the BMW. Mussari was shown documents submitted to GNP by Petitioner. Mussari stated that the documents submitted by Petitioner contained forged signatures. Mussari also stated that the documents falsely showed a "Mr. Quante" as being an owner of Quality Auto Brokers.

On July 29, 2002, more than two years after Petitioner had withdrawn from the conspiracy, a criminal complaint was filed against Petitioner and two other defendants in the San Diego County Superior Court. The complaint alleged, inter alia, that Petitioner had committed four felonies: one count of an alleged violation of Penal Code section 182(a)(1) [conspiracy to commit a crime] and three counts of allegedly violating Penal Code section 550(a)(4) [presenting false/fraudulent claim for payment on a motor vehicle (insurance fraud)].

On August 19, 2002, Petitioner reported this felony complaint to the State Bar.

On May 5, 2003, Petitioner entered a guilty plea to one felony count of violating Penal Code section 182(a)(1) [conspiracy to commit a crime, to wit, to violate Penal Code section 487(a) [grand theft], and the court dismissed the remaining counts in the furtherance of justice.

On July 11, 2003, Petitioner filed a resignation from the State Bar with charges pending and was subsequently ordered inactive (case No. 03-Q-02738).

On July 15, 2003, the court placed Petitioner on a three-year probation and ordered him to serve 181 days of custody/work-furlough and to pay restitution and various fines.

On July 21, 2003, Petitioner was placed on interim suspension as an attorney as a result of his felony conviction (case No. 02-C-13996).

On July 28, 2003, the Supreme Court filed an order accepting Petitioner's resignation with charges pending, effective August 27, 2003.

Petitioner's periods of criminal probation and work-furlough were subsequently shortened. He remained in custody/work-furlough only from July 24, 2003, through November 20, 2003. His probation terminated on June 24, 2006. All fines and restitution obligations were properly satisfied.

On September 18, 2006, shortly after Petitioner's criminal probation had ended without incident, Petitioner's conviction was reduced by the court to a misdemeanor and expunged. (Pen Code, § 1203.4.)

Rehabilitation and Present Moral Qualifications for Reinstatement

As noted above, with the birth of Petitioner's first child on February 22, 2000, Petitioner made a commitment to being a better person, including living a completely moral life and becoming an active contributor to both his profession and his community.

As an immediate step in this commitment, Petitioner took a vow of complete sobriety. He has maintained that vow to the present day, now nearly 15 years later. To reinforce his ability to honor that commitment to sobriety, Petitioner actively participated in the Other Bar from 2002 to 2008, including serving as the local Secretary/Treasurer of that organization from 2003-2006. His ongoing participation in the Other Bar only terminated when the group shifted

its meeting time to the evenings, creating a conflict with Petitioner's commitment to spending time with his growing family.

In his professional life, Petitioner also sought to become an active contributor to the public and to the community of attorneys practicing worker's compensation law. During the three-year period prior to his resignation, he volunteered his time and expertise to the public through Allexperts, a website providing free legal advice to the public. He provided extensive pro bono legal services to various individuals. He maintained "an early email information service that kept the community informed and involved of case law, job openings, and general community information." (Ex. 1132, p. 2.) He was active in the local chapter of the California Applicant's Attorneys Association, including serving on its Board of Directors. (Ex. 1106, p. 1.) In 2002, he obtained donated computers for installation at the local WCAB office, where they could be used by the public and by attorneys practicing at that location. In 2003-2004, even after he resigned from the State Bar, he helped organize and raise funds for an annual holiday gala for the local worker's compensation bar, an event raising funds for scholarships for the children of a deceased attorney and for financial aid to the "Boys of Sudan."

In 2000, Petitioner also became a substantial contributor to his residential community, Chula Vista. Chula Vista was founded more than one hundred years ago, has many old homes and buildings, and is now endeavoring to preserve and promote those historical treasures. Petitioner has been a leading force in that effort since 2000. Among his many efforts, he has served as a member of the Board of Directors of the Chula Vista Heritage Museum at all times since 2000, including serving as the President of that board from 2003 to the present. He has been a member of the Historical Preservation Committee from 2000 to the present. That committee is a product of a working agreement between the City of Chula Vista and the Chula Vista Heritage Museum and is dedicated to raising funds for historical preservation efforts in the

city. He has also been a member of the Historic Home Tour Committee in Chula Vista from 2000 to present. These home tours, which began in 2001, are a major source of the funding of the continued operation of the museum and of other historical preservation activities. And, since 2003, Petitioner has been a member of the Board of Directors of the Friends of the Chula Vista Library, which is a major source of funding for the library.

It is noteworthy that Petitioner began all of these community efforts in 2000, well before any criminal charges were ever filed against him, and that he continued to serve in these many positions (at least one of which is elected) both during and after those criminal proceedings. Particularly telling is the decision of the City of Chula Vista to honor Petitioner in 2003 as the Historical Preservationist of the Year, despite Petitioner's conviction at virtually the same time. Although Petitioner offered to decline the award due to his concern that his conviction could be an embarrassment to the city, the city declined that offer.

Petitioner has also had numerous charitable activities outside of Chula Vista in the past. One character witness, an insurance executive, recalled: "Carlos in the past has volunteered his time and donated to notable causes such as the Leukemia Society, Damas Latinas de San Diego and the Polansky Center for Abused Kids just to name a few. I can remember a few years ago, he organized and raised \$55,000 for the Polansky Children's Center."

Petitioner also provided importance assistance to Fresh Start Surgical Gifts (Fresh Start), a charitable organization providing free plastic surgery to children with physical deformities. A former director of that organization, also a character witness for Petitioner, recalled that, when her organization "wanted to reach out to the Latino community in San Diego County and across the border" to raise awareness about the benefits it provides, it asked Petitioner for assistance. Petitioner efforts in response to that request resulted in Fresh Start receiving extensive coverage in the Spanish language media. As this former director of that charitable agency described the

results of Petitioner's efforts, "Mr. Fox helped make it very easy for families in need to find us and get the medical treatment their kids so desperately need." (Ex. 1148.)

In support of his effort to prove his rehabilitation and present moral qualifications, Petitioner presented good character evidence from more than 50 individuals, including, inter alia, the current mayor of the City of Chula Vista, who is a former state assembly member; other members of the Chula Vista City Council, including the Deputy Mayor; numerous leaders of various Chula Vista community organizations; more than two dozen attorneys; a retired WCAB judge; various other members of his community; and his priest. These individuals expressed their respective observations and views regarding Petitioner's complete rehabilitation; his recognition of and remorse for his involvement in the illicit scheme in 1999; and his honesty and good moral character. In addition, as occasionally noted above, many provided testimonials regarding Petitioner's extensive contributions to the Chula Vista community and various charitable activities since 2000; his past contributions to the legal profession; his ongoing sobriety; the many instances since 2000 when he has been called on to handle money belonging to others and has done so without issues; his past and current pro bono activities; and his deep commitment to his family and his religion. The many attorneys endorsing his request to be reinstated to the practice of law also frequently commented on what a fine attorney he had been in the past, the consistently ethical manner in which he had practiced, his fierce commitment to his clients, and the important role he played in representing injured workers from the Hispanic/Latino community.

The Review Department of this court has "observed that 'in determining whether an erring attorney has proved rehabilitation and present moral qualifications, the California Supreme Court has heavily weighed the favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and

mode of living' of such an attorney. [Citations.]’ ” (*In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816, 822-823; quoting *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 317-318.) Moreover, it is well-established that favorable testimony from members of the bar and members of the public held in high regard is entitled to considerable weight. (See, e.g., *In the Matter of Salyer, supra*, 4 Cal. State Bar Ct. Rptr. at p. 824; *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 431.) While such character testimony does not alone establish the requisite good character, here it strongly corroborates and expands on the other evidence of rehabilitation and present good moral character received by this court.

The State Bar called no witness who opposed Petitioner’s request for reinstatement or who disputed the many attestations by others of Petitioner’s complete rehabilitation and present good moral character. Nonetheless, the State Bar argues that Petitioner has failed to provide clear and convincing evidence of his rehabilitation and good moral character. As discussed below, this court disagrees.

Citing to language of prior cases stating that an applicant for reinstatement must show exemplary conduct for a “sustained period,” counsel for the State Bar contends in his post-trial closing brief that only Petitioner’s rehabilitation and exemplary conduct after June 2006, when Petitioner “was no longer under the supervision of the criminal justice system,” should be considered by this court. No authority was cited in support of such a narrow approach, and it has been specifically rejected by the Review Department of this court in a published opinion. (See *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459, 464.) Moreover, such a narrow approach would be especially inappropriate in this proceeding, where the evidence is uncontradicted that Petitioner made a commitment in February 2000 to live an exemplary life; that he promptly acted on that commitment by terminating his involvement in the previously-

formed criminal conspiracy; that he took at that time a vow of sobriety that has now lasted 15 years; and that he energetically pursued his commitment to living a moral and exemplary life for more than two years before criminal charges were even filed against him.

In responding to Petitioner's many community and charitable activities, the State Bar also argues that they fail to evidence rehabilitation and exemplary conduct for the following reason:

Most of the community service with which Mr. Fox is still engaged is a continuation of the community service he was doing in or prior to 2003. If this demonstrates anything, it is that Mr. Fox can engage in charitable work while *simultaneously* engaging in criminal conduct.

(State Bar Closing Brief, p. 4, lines 22-25[italics in original].)

This argument lacks any support in the evidentiary record. There is no evidence of any criminal conduct by Petitioner in 2003 or at any time after February 2000. His last participation in the criminal conspiracy took place in February 2000, at which time he affirmatively refused to participate any further in it and made his commitment to live an exemplary life. All of the community and other activities, described above, took place after he made that commitment. No good reason exists to refuse to acknowledge those efforts.

The State Bar further contends that Petitioner's community and charitable activities should not be considered evidence of exemplary conduct because Petitioner derived a personal benefit from those activities. In support of that contention, the State Bar cites to *In re Glass* (2014) 58 Cal.4th 500, 526.

This contention also lacks merit, both factually and legally. Petitioner derived no direct personal benefit from many of the community and charitable contributions that he has made. Further, to the extent that he benefitted from some of his community activities, he benefitted from them as a member of his

community.³ He is entitled to receive credit here for his personal efforts in bringing those benefits to the other members of his community. The Supreme Court's decision in *Glass* is not to the contrary. There, the court merely held that the record of Glass's therapy should not be treated as evidence of exemplary conduct because it "does not represent 'truly exemplary conduct in the sense of returning something to the community.'" (*Ibid* [emphasis added].) That assessment is clearly not applicable here.

Turning to other objections by the State Bar to Petitioner's reinstatement, it makes the following contention that Petitioner's application for reinstatement is misleading and contains a material omission:

At the end of his list of Financial Obligations on page 29, Mr. Fox states, "The Petitioner makes note that there are extensive debts that have been charged off, written off, and/or the collection of which by judicial means is not viable as a result of the running of the applicable statute of limitations." [¶] At trial, Mr. Fox explained that he was not referencing creditors otherwise listed in the Disclosure Statement, he was referencing *additional* creditors. [emphasis in original] Mr. Fox explained that he did not include the additional debts because they were not collectable, but also saying he didn't owe them or that he didn't know the extent of those debts at the present time."

(State Bar Closing Brief, p. 13, lines 10-17.)

The court fails to find that the quoted Petitioner's disclaimer in his disclosure of his Financial Obligations is leading, contains any material omission, or reflects any moral deficiency on Petitioner's part. To accept the State Bar's suggestion that the above note by Petitioner was somehow misleading because it

³ In support of its contention, the State Bar cites primarily to Petitioner's activities in lobbying for adoption in Chula Vista of the Mills Act, which "offers historical homeowners a reduction in property taxes if they agree to preserve, restore or rehabilitate the historical resource." (State Bar Closing Brief, p. 8, lines 17-20.) This act clearly provides a benefit in exchange for a burden. The net financial result of the act with regard to Petitioner is unknown. Nonetheless, because Petitioner's conduct in that regard was lobbying a political body, this court has declined to treat it as evidence of exemplary conduct.

did not make clear that it was “not referencing creditors otherwise listed in the Disclosure Statement” but instead was “referencing *additional* creditors,” would require this court to ignore completely the following heading, written by Petitioner and placed immediately before the quoted language:

NOTE REGARDING ADDITIONAL CREDITORS: [Italics added.]

To pretend that this heading did not exist would be both difficult and inappropriate for this court to do, especially since this heading is in **bold type**, underlined, printed in ALL CAPITAL LETTERS, and written on the very same line of print as the beginning of the language quoted by the State Bar to this court in support of its contention. (See Ex. 16, p. 29.) Further, the State Bar’s argument ignores the limited inquiry contained in the Disclosure Statement, which only asks Petitioner to “List the following information regarding debts and financial obligations petitioner owes as of the date of this Disclosure Statement[.]” (Ex. 16, p. 27 [emphasis added].) Petitioner’s affirmative effort to make clear in his disclosure statement that there were additional past creditors who were not being identified for various reasons, including the fact that he no longer owed the prior debts to them, is evidence of his good character, not the contrary.

In a related area, the State Bar argues that Petitioner lacks moral character because he has “financial obligations he has been unable to meet.” It goes on to note: “Most recently, Mr. Fox incurred approximately \$145,000 in emergency medical bills due to a recent health crisis.” It then concludes that “Mr. Fox’s attitude towards [sic] his debts and avoidance of creditors does not demonstrate the honesty, trustworthiness, or observance of fiduciary responsibility which are

needed to establish moral qualifications to return to the practice of law.” (State Bar Closing Brief, pp. 9-10.)

This court finds there is also no merit in that contention. Petitioner testified credibly that he has been trying to pay his bills. As the State Bar aptly described those bills, they are “financial obligations he has been unable to meet.”⁴ The mere fact that an individual’s debts may exceed that person’s ability to pay is not synonymous with moral deficiency or depravity. (See, e.g., *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) In this case, it also is not a marker of any moral deficiency.

In 2004, Petitioner entered into a real estate development plan in Hawaii with Richard Priest (Priest). The venture ended in 2007 and resulted in Priest absconding with significant funds and assets belonging to Petitioner and exposing him to numerous creditors. Petitioner made many efforts to communicate with Priest about Priest’s need to return the money and property owing to Petitioner, but Petitioner was unable to get any response. Eventually, Petitioner was forced to file a lawsuit against Priest, in which he has now taken Priest’s default.

There is no contention made by the State Bar that Petitioner’s involvement in the failed Hawaiian venture reflects any moral deficiency on Petitioner’s part or that Petitioner had any involvement in Priest’s widespread mishandling of third-party funds and assets of others.⁵

⁴ The State Bar seeks to argue that Petitioner’s decision to transfer title of the family home to his wife reflects some effort to defraud Petitioner’s creditors. Petitioner, however, testified credibly that this decision was made recently, at a time when he was combatting a life-threatening condition, and the transfer was made to avoid the possible need for the house to go through probate if he did not survive. This transfer of title to his wife did not immunize the property from being subject to community debts; nor did it hide the house from creditors of the community. (See, e.g., Fam. Code, § 914(a)(1); Civ. Code, § 687; Prob. Code, §28; *Frymire v. Brown* (1949) 94 Cal. App. 2d 334, 339 [fact that home acquired during marriage is held in name of only one spouse is not determinative of whether it is separate or community property].)

⁵ Several of the individuals submitting character declarations on Petitioner’s behalf were involved in this Hawaiian venture, each attesting to Petitioner’s honesty in handling his portion of the business. These individuals also corroborated Petitioner’s uncomplimentary testimony regarding Priest.

Instead, it merely criticizes numerous text messages sent by Petitioner to Priest and Priest's son (who was also involved in the venture). In these various messages, Petitioner demanded that Priest step forward to address and resolve the many problems he had created, insulted Priest for his actions and personality, and made threats of litigation if Priest failed to address the situation. In the course of these messages, Petitioner also made statements about his own lifestyle and financial well-being that were untrue. The State Bar also criticizes Petitioner for creating, maintaining and publicizing a website entitled "RichardPriestisathief.com," which then received contributions of testimonials and anecdotes by a large number of other members of the public regarding Priest's unethical practices and lack of moral character.

At trial, Petitioner explained his messages and website by stating that he was upset that Priest had stolen so much money from him,⁶ effectively rendering Petitioner and his family financially destitute at a time when he and his wife were expecting another child. Petitioner then grew even angrier when Priest essentially went underground and failed to respond to Petitioner's many communications. Petitioner's conduct, as he explained it, was intended to motivate Priest to come out of hiding, so that they could work together to settle their differences and resolve the complaints of others without litigation.

While this court does not endorse all of Petitioner's actions regarding Priest, it does not find them sufficient to offset or set aside the otherwise clear and convincing evidence of Petitioner's rehabilitation and good moral character. In the main, they merely reflect Petitioner's anger with Priest, rather than any moral deficiency. There is no evidence that Petitioner took any illegal acts as a result of his anger at Priest⁷ or as a result of the resulting financial hardship.⁸

⁶ At trial, Petitioner indicated that Priest had used Petitioner's credit to secure financing and then absconded with something in the range of \$700,000.

⁷ Instead, when the Priests sought a restraining order from the court, the matter was summarily rejected by the court.

⁸ It also did not result in any breach by Petitioner of his vow of complete sobriety.

Further, most, if not all, of Petitioner's actions were ones protected by the First Amendment, including Petitioner's creation of the website, and there is a dearth of evidence showing that his accusations and insults were untrue.⁹ (Cf. *Standing Comm. on Discipline of the United States Dist. Court v. Yagman* (9th Cir. 1995) 55 F.3d 1430; *Siegel v. Committee of Bar Examiners* (1973) 10 Cal.3d 156.) While Petitioner's efforts at puffing his financial ability to do litigation battle with Priest were clearly inaccurate, those missteps were sufficiently limited in nature and duration, remote in time, and the result of such extreme provocation that this court does not find them to be of sufficient weight to negate the overwhelming other evidence that Petitioner is now completely rehabilitated and has the requisite moral character to be reinstated to the practice of law.

Turning to other objections by the State Bar, within ten days after Petitioner's resignation from the State Bar, he filed a petition with the Worker's Compensation Appeals Board in 2003 to be allowed to appear as a layperson representative before it. The State Bar contends that this action was inappropriate and that Petitioner sought to "excuse" his criminal acts in that petition. The evidence again fails to support the State Bar's contention. While Petitioner now states that it was probably not realistic for him to have believed in 2003 that the WCAB would allow him to practice as a layperson in that forum so soon as his felony conviction, he explained at trial that he filed his petition in an effort to be able to continue to represent the many clients whose matters would otherwise be negatively impacted by his resignation. He was also being encouraged by his firm and by others in the worker's compensation bar to seek the board's permission to continue to represent injured workers before it. That there was considerable support in the legal community at that time for Petitioner to be allowed to continue to appear before the WCAB is

⁹ In contrast, Petitioner's public accusation that Priest was a thief was corroborated at trial by evidence from several of the character witnesses familiar with Priest and by the evidence that numerous individuals added comparable complaints to the website about him.

reflected in the enormous number of letters submitted by attorneys in support of his petition. With regard to the State Bar's contention that the petition sought to "excuse" Petitioner's criminal conduct, a review of the petition reveals both that it included a copy of the plea agreement and, more importantly, that Petitioner's description of the events leading up to the conviction begins with the following express acknowledgement of responsibility:

Antecedent to providing the Board with the facts leading to the resignation, Petitioner cautions the Board that nothing set forth in this petition should be construed as an attempt by Petitioner to justify or rationalize the misconduct described herein. In addition, nothing set forth herein be construed [sic] as an attempt to shift blame on others, or diminish the Petitioner's responsibility for the acts described herein. The Petitioner accepts full responsibility for his actions, as well as responsibility for the actions of anyone else involved with the acts described herein.

(Ex. 3, p. 2.)

Finally, the State Bar argues that Petitioner has recently sought to conceal information from the Governor in his petition for clemency in 2013, because, in completing the pardon application form, he did not provide the specific details of all of his actions during the aborted conspiracy. This failure, the State Bar argues, is evidence of a continued moral deficiency on Petitioner's part. This court disagrees. Petitioner testified, and the application form itself confirms, that the form seeks only a "brief description of the circumstances of the crime for which pardon is requested." In Petitioner's response to this inquiry, after having previously stated that he was convicted of a conspiracy to commit grand theft, Petitioner makes clear that he "participated in a scheme to defraud a Mexican insurance company regarding the filing of false and fraudulent insurance claims for false claims of auto theft falsely reported to have occurred in Mexico." (Ex. 11, p. 6.) Given that this application is only the beginning of the Governor's inquiry related to the clemency request, this answer was clearly sufficient.

DISCUSSION

The law favors the regeneration of erring attorneys and should not place unnecessary burdens upon them in proving rehabilitation. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315, citing *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 404; *Resner v. State Bar* (1967) 67 Cal.2d 799, 811; *In re Gaffney* (1946) 28 Cal.2d 761, 764; *In re Andreani* (1939) 14 Cal.2d 736, 749; and *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373, 382.) Even an attorney's prior "egregious past misconduct" does not preclude reinstatement. (*In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883, 890.) While evidence of sustained exemplary conduct is required for reinstatement to be granted, sustained exemplary conduct "does not require perfection from an applicant nor total freedom from true mistake." (*In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, 37; see, e.g., *In the Matter of Salyer, supra*, 4 Cal. State Bar Ct. Rptr. 816 [member reinstated despite failure to file rule 955 affidavit]; *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1 [member reinstated despite failure to file rule 955 affidavit]; *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423 [petitioner's failure to be forthcoming with his clients about the circumstances of his resignation, suggesting to them that he was retiring and concealing his discipline, was not a bar to reinstatement]; *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546 [DUI conviction after resignation not a bar to reinstatement].) "'Where the evidence is uncontroverted . . . and shows exemplary conduct extending over a period of from eight to ten years without even a suggestion of wrongdoing, it would seem that rehabilitation had been established.'" (*In the Matter of Brown, supra*, 2 Cal. State Bar Ct. Rptr. at p. 317; quoting *Werner v. State Bar* (1954) 42 Cal.2d 187, 198 (conc. opn. of Carter, J.).)

It has been nearly a decade and a half since Petitioner's prior misconduct, which took place during the period from May 1999 to February 2000. He recognized long ago the impropriety of his actions, affirmatively withdrew in 2000 from his aberrational venture into criminal activity, has consistently and repeatedly expressed remorse for his prior misconduct, made a commitment in February 2000 to live forthwith an exemplary life, and has demonstrated by repeated conduct from 2000 to the present his ongoing commitment to that ideal. There is no evidence of any misconduct or problems in either Petitioner's personal life prior to 1999 or in his practice of the law in the 15 years prior to his resignation. Nor is there any evidence of any repetition of illegal misconduct by him in the last 15 years. Instead, he has presented overwhelming evidence, including extensive testimonials from leaders of his community and members of the legal profession, of his complete rehabilitation and present good moral character. At no risk of overstatement, he has become a highly-regarded pillar of his community.

In sum, it is the conclusion of this court that Petitioner may be allowed to resume the practice of law without any risk of future misconduct or embarrassment to the profession. Accordingly, the court will make the following recommendation to the California Supreme Court.

RECOMMENDATION

It is recommended that petitioner **Juan Carlos Fox** be reinstated to the practice of law in the State of California upon payment of any applicable fees and the taking of the oath required by law.

Dated: February ____, 2015

DONALD F. MILES
Judge of the State Bar Court